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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

VISITACION PERDIDO et al.,

Plaintiffs and Appellants,

v.

CRUZ PLUMBING,

Defendant and Respondent.

A128350

(Alameda County  
Super. Ct. No. HG05-219147)

As 82-year-old Marcelino Perdido was pulling weeds from his front sidewalk by the street, he was struck by a truck driven by an employee of defendant Cruz Plumbing. Mr. Perdido died from his injuries. His heirs, his wife Visitacion Perdido and their seven children (plaintiffs), sued for personal injuries and wrongful death. Using a counsel-prepared special verdict form, the jury found the Cruz Plumbing employee was negligent, but did not find causation. Plaintiffs appeal from the judgment for defendant and contend the verdict is inconsistent because the findings of negligence and no causation cannot be harmonized. We disagree and affirm.

**I. FACTS**

On April 6, 2005, Huber Ramirez, an employee of Cruz Plumbing, was at the home office of Ruben Cruz, who owned and operated the company. Ramirez left the home office and went to his truck, a Chevrolet Avalanche, parked by the sidewalk. Ramirez approached the truck, apparently from the rear, and entered the driver's door. At the same time, Cruz' stepson, Daniel Hurtado, approached the truck from the rear and entered on the passenger side. Ramirez started the engine, put on his seat belt and

eyeglasses, looked forward “to see if anything was there,” and began driving forward. Ramirez admitted he did not lean forward to get a better view of what was in front of the truck before he started to drive—but he did say he *looked* forward.

After driving two to three feet, Ramirez felt a bump. He thought he had hit the curb. Hurtado, Ramirez’ passenger, testified he saw Marcelino Perdido (hereafter Perdido) after Ramirez began to drive and was “pretty sure we ran him over.”

Ramirez testified he drove for another 10 to 15 feet and then stopped, got out of the truck, and saw Perdido in the street behind the truck. According to his testimony on direct examination, Ramirez said he asked Perdido what had happened and if he was okay. Ramirez said Perdido said nothing and walked up his driveway. He did not appear to be bleeding.

Ramirez got back into his truck and continued driving. He then realized the bump was probably caused by him running over Perdido, so he drove around the block and returned to the accident scene. Perdido was on the front porch of his house. Ramirez asked him if he could help.

There was eyewitness testimony that Ramirez did *not* stop and get out of the truck, but drove or sped off and only returned later, presumably after he drove around the block. Ramirez himself equivocated on redirect and recross-examination about whether he got out of the truck before driving off. There was also testimony that Perdido did not get up and walk, plus medical testimony that it was unlikely he could given his injuries.

Perdido died of “multiple blunt injuries.”

Plaintiffs presented evidence that Ramirez knew or should have known that Perdido was pulling weeds near where Ramirez had parked his truck. Apparently, Cruz and Perdido were next door neighbors. Despite Ramirez’ denial that he ever saw Perdido out in front of the Cruz home sidewalk pulling weeds, several neighbors testified, in various ways, that Perdido was in front of the Cruz home pulling weeds almost every morning and that Ramirez usually parked his truck in front of the Cruz house several times a week, usually or mostly in the morning.

On the morning of the accident, several witnesses saw Perdido bent down over the sidewalk near the curb pulling weeds. Some saw him weeding 10 to 15 minutes before the accident. Despite Ramirez’ denial that Cruz talked to him about Perdido being “out [there] pulling weeds next door,” Cruz testified that about 45 minutes before the accident he told Ramirez “the old man next door [is] out there pulling weeds.”

California Highway Patrol Officer Diamond, however, concluded from his accident investigation that Perdido was likely to have been sitting or squatting so that Ramirez could not see him. And another witness saw the truck stationary just prior to the accident and did not see Perdido in front of the truck.

The parties presented conflicting expert testimony regarding Perdido’s visibility to Ramirez as the driver of the truck. We need not discuss this evidence or the experts’ methodologies in detail. As an appellate court we cannot reweigh the evidence presented to the jury, which was instructed with CACI No. 221, “Conflicting Expert Testimony.”<sup>1</sup>

Expert Yoshida testified for the plaintiffs regarding several visibility studies he conducted, using various factors such as the distance between the truck and Perdido and the eye height of the driver. Yoshida also assumed Perdido’s height while crouching was 38 inches. Yoshida concluded Perdido was visible beginning at a distance of four and one-half to five feet in front of the truck. But Yoshida also testified that Ramirez did not see Perdido immediately before the accident. He agreed that “we really don’t know exactly where” Perdido was 30 seconds before, or at the time of, the accident.

Expert Kelkar testified for the defendant. He used a different methodology from Yoshida. He disagreed with Yoshida’s assumption that Perdido’s crouching height was 38 inches, and believed it was between 30 and 36 inches. Kelkar concluded that Perdido was crouched down in an area hidden from the driver Ramirez as he approached and entered the truck, and was crouched at a distance so that he was hidden from view of the driver and passenger from inside the truck. He did admit the “possibility” that Ramirez may have had visibility of Perdido, but was not looking in that direction.

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<sup>1</sup> CACI is the recognized short form reference to the Judicial Council of California Civil Jury Instructions.

Plaintiffs proceeded on several theories of negligence. In his opening statement, plaintiffs' counsel argued that Ramirez was under the influence of methamphetamine and was thus inattentive, and that he had illegally parked with his right two wheels on the sidewalk and had run over Perdido as he drove forward. Plaintiffs introduced evidence of illegal drug use and, as set forth above, evidence that Ramirez should have seen Perdido and that he left the scene of the accident without stopping. In his closing statement, plaintiffs' counsel argued several theories of Ramirez' negligence: driving on the sidewalk in violation of Vehicle Code section 21663; illegal drug use; leaving the scene of the accident; and not rendering assistance when he returned to the scene.

The jury was given the general negligence instruction, CACI No. 401: "Negligence is the failure to use reasonable care to prevent harm to oneself or to others. [¶] "A person can be negligent by acting or failing to act. A person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. [¶] "You must decide how a reasonably careful person would have acted in . . . Ramirez' situation."

The jury was also instructed on intoxication (CACI No. 404) and on negligence per se for violation of four Vehicle Code sections: section 21663 (operating or moving a vehicle on a sidewalk); section 21952 (yielding the right-of-way to a pedestrian prior to driving over or upon a sidewalk); section 21954 (exercising duty of care toward any pedestrian in a roadway); and section 22106 (starting a stopped vehicle unless such movement can be made with reasonable safety).

The jury was repeatedly instructed on the essential element of causation. The jury was instructed with CACI No. 400, "Essential Factual Elements," that it had to find Ramirez was negligent; plaintiffs were harmed by that negligence; and that negligence "was a substantial factor" in causing the harm. The jury was also instructed on causation with regard to the theories of negligence per se advanced by plaintiffs, based on the alleged violation of the four Vehicle Code sections just discussed. Finally, the jury was instructed with CACI No. 430, "Causation: Substantial Factor": "A substantial factor in

causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. [¶] “Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct.”

The trial court used a special verdict form, which was prepared by plaintiffs’ counsel. The court instructed the jury with CACI No. 5012, “Introduction to Special Verdict Form,” which carefully explained to the jury that it had to consider each question on the form separately.

The jury returned the following verdict. Question No. 1 of the special verdict form asked the jury whether Ramirez was “acting as an agent and/or employee of Cruz Plumbing.” The jury replied, “Yes.” Question No. 2 asked the jury whether Ramirez was “acting within the course and scope of his agency or employment when Marcelino Perdido was injured.” The jury replied, “Yes.” Question No. 3 asked the jury whether Ramirez was negligent. The jury replied, “Yes.” Question No. 4 asked the jury whether Ramirez’ negligence was “a substantial factor in causing the death of Marcelino Perdido.” The jury replied, “No.”

There is nothing in the record to indicate that plaintiffs objected to the verdict as inconsistent before the jury was discharged. The trial court entered a judgment on the special verdict that plaintiffs take nothing from defendant.

Plaintiffs moved for a new trial on the ground of insufficient evidence to support the no causation finding and, apparently, did not explicitly challenge the verdict as inconsistent. In opposition to that motion, defendant produced declarations of two jurors stating the jury found Ramirez was negligent only for leaving the scene of the accident and that this negligence was not a substantial factor in causing Perdido’s death. In reply, plaintiffs correctly noted that juror declarations are inadmissible to the extent they purport to describe the internal thought processes of jurors or how they reached their verdict. (Evid. Code, § 1150, subd. (a); see, e.g., *People v. Dillon* (2009) 174 Cal.App.4th 1367, 1384, fn. 9; *Bandana Trading Co., Inc. v. Quality Infusion Care, Inc.* (2008) 164 Cal.App.4th 1440, 1446.)

The trial court denied the motion for new trial. The court expressly stated it did not consider the inadmissible juror affidavits disclosing the purported reasoning of the jury. But the court concluded: “Excluding that improper disclosure, there was still, from the court record alone, credible evidence that could support [the] jury’s determination. For example, there was credible evidence that no one in . . . Ramirez[’] position could have, or should have, known that anyone was crouched in front of . . . Ramirez’ parked truck before he started the truck. If no one could have known that someone was crouched in front of his truck, starting the truck and moving forward would not be negligent. There was also credible evidence that the noise produced by . . . Ramirez’ vehicle when it started would have been loud enough and would have lasted long enough so that anyone crouched in front of the vehicle, like . . . Perdido, would have had time to get away before the vehicle began to move. If . . . Perdido’s negligence caused his own injury, then the jury could have believed that the moving of the truck was not a ‘substantial factor’ in . . . Perdido’s injuries. There were many other facts available to the jury and presented over the many days of trial including the credibility of the witnesses who testified. Those facts could have contributed to cast doubt over whether . . . Ramirez[’] conduct was a ‘substantial factor.’ ”

## **II. DISCUSSION**

Plaintiffs contend the verdict is inconsistent because the findings of negligence and no causation cannot be harmonized. We disagree for the following reasons.

An inconsistent verdict is one which is “beyond possibility of reconciliation under any possible application of the evidence and instructions.” (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 540 (*Hasson*), overruled in part on unrelated grounds *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574, 580.) “If any conclusions could be drawn thereunder which would explain the apparent conflict, the jury will be deemed to have drawn them. [Citations.]” (*Hasson, supra*, 19 Cal.3d at pp. 540–541.) Where, as the case is here, a party does not object to the verdict before the discharge of the jury, the trial judge will interpret the verdict from its language considered in connection with the pleadings, evidence, and instructions. (*Woodcock v. Fontana Scaffolding & Equip. Co.*

(1968) 69 Cal.2d 452, 456–457; see *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 92.) A satisfactory explanation of the verdict is sufficient to uphold it. (See *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 705.)

It is not unheard of for a party to be found negligent and the trier of fact to find the negligence was not the cause of the plaintiff’s injuries. (See, e.g., *Akins v. County of Sonoma* (1967) 67 Cal.2d 185, 198–199.)

Plaintiffs base a large portion of their argument on the premise that leaving the scene of the accident could not have been a basis of the jury’s negligence finding, but that the jury must have found Ramirez negligent based on his driving of his truck. Plaintiffs point to the numerous theories of negligence based on Ramirez’ driving and argue that the jury’s negligence finding must be based on improper driving. But while Perdido’s death was the result of being hit by Ramirez’ truck, this does not necessarily mean that Ramirez’ negligence *caused*—in the legal sense of being a “substantial factor”—Perdido’s injuries and death.

In other words, the jury could well have concluded—as the trial court observed—that any negligence did not cause Perdido’s injuries because, for instance, a negligent failure to lean forward and look would not have revealed Perdido to the driver of the truck because he was crouched such that he could not be seen. Even plaintiffs’ own expert acknowledged that it was impossible to know exactly where Perdido was at the time of the accident. Likewise, the jury could have concluded that any ingestion of illegal drugs did not cause Perdido’s injuries because Ramirez was not rendered inattentive or because Perdido could not be seen from the truck in any case.

Plaintiffs stress that, in cross-examination of a medical witness for plaintiffs, defendant’s counsel conceded there was “no dispute” that “the fatal injuries of Mr. Perdido were the result of an auto accident, as opposed to a fall.” However, counsel was not conceding legal causation, but only that Perdido was hit by the truck—in the defense view, an accident not legally caused by any negligence of Ramirez.

We again quote the trial court’s finding that “[t]here were many . . . facts available to the jury and presented over the many days of trial including the credibility of the

witnesses who testified. Those facts could have contributed to cast doubt over whether . . . Ramirez['] conduct was a ‘substantial factor.’ ” Under the applicable standard of review, we are obligated to uphold the verdict if there can be a satisfactory explanation of it from the pleadings, evidence, and instructions. We conclude that there is such a satisfactory explanation with substantial evidence to support it.

### **III. DISPOSITION**

The judgment for defendant is affirmed.

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Marchiano, P.J.

We concur:

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Dondero, J.

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Banke, J.